

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

HOLST TRUCKING COMPANY, INC.

Scott County, IA

ADMINISTRATIVE CONSENT ORDER

NO. 2008-AQ-~~28~~

NO. 2008- SW- **22**

TO: Robert J. Holst
Holst Trucking Company, Inc.
24118 270th Street
LeClaire, IA 52753

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Holst Trucking Company, Inc. (Holst Trucking) for the purpose of resolving violations relating to open burning of combustible materials and improper solid waste disposal. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Ryan Stouder, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, IA 52353
Phone: (319) 653-2135,

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part;

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Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Robert J. Holst is a contractor in the demolition industry and owns and operates the Holst Trucking Company, Inc. business located at 24118 270th Street, LeClaire, Iowa 52753.

2. On May 31, 2002, DNR Field Office 6 received a complaint that Holst Trucking was hauling demolition waste to the property located at 24118 270th Street, LeClaire, Iowa and burning the material.

3. On June 5, 2002, Ken Marsengill, environmental specialist for DNR Field Office 6, investigated the complaint. Mr. Marsengill did not observe open dumping or burning at the Holst Trucking property. During a phone conversation, Mr. Marsengill informed Mr. Holst that demolition waste cannot be hauled to this property and cannot be burned.

4. On October 2, 2007, DNR Field Office 6 received a complaint regarding open dumping of demolition waste at the Holst Trucking property located at 24118 270th Street, LeClaire, Iowa. The anonymous complainant sent photos to Field Office 6 to demonstrate the dumping situation.

5. On October 5, 2007, Ryan Stouder, environmental specialist for DNR Field Office 6, investigated the complaint. Mr. Stouder observed open burning of the dumped demolition waste in a ditch at the Holst Trucking property. Mr. Stouder observed a large pile of demolition debris including concrete blocks and building material consisting of wood, metal, wiring, shingles, tires and trees.

6. On October 8, 2007, DNR Field Office 6 issued a Notice of Violation letter to Holst Trucking. The letter cited Holst Trucking for opening burning of combustible materials and improper solid waste disposal. The letter informed Holst Trucking that the matter was being referred for further legal enforcement action.

7. On January 14, 2008, Mr. Stouder conducted a follow up visit to verify compliance with the October 8, 2007 Notice of Violation letter. During this investigation, Mr. Stouder observed a burn pile and a burn barrel that contained steel cans, paper, food wrappers, and plastic waste. The demolition waste from the previous visit appeared to be

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removed or buried since the site was graded. However, DNR Field Office 6 had not received any disposal receipts for solid waste disposal.

8. On January 18, 2008, Holst Trucking was issued a Notice of Violation letter for open burning of combustible materials and improper solid waste disposal. The letter required Holst Trucking to remove all demolition waste, rubbish, ash and other non salvageable solid waste from the property and recycle, salvage, or properly dispose of them by February 15, 2008. Holst Trucking was required to submit all of the disposal receipts for solid waste disposal to DNR Field Office 6. The letter informed Holst Trucking that the matter was being referred for further legal enforcement action.

9. On March 27, 2008, Mr. Stouder conducted a follow up visit. The solid waste and burning had ceased at the Holst Trucking property and it appeared the material had been removed.

IV. CONCLUSIONS OF LAW

1. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). Holst Trucking openly burned demolition waste at the Holst Trucking property as observed by Mr. Stouder during the October 5, 2007 and January 14, 2008 investigations. This demolition waste does not fall under any exemption in 567 IAC 23.2(3) and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

2. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Holst Trucking dumped and burned a large pile of demolition debris which included concrete blocks, and building material of wood, metal, wiring, shingles, trees, and tires rather than recycling the waste or disposing the waste at a sanitary landfill. The above facts demonstrate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Holst Trucking agrees to do the following:

1. Pay a penalty of \$1,535.50 within 30 days of the date from which the Director signs this administrative consent order; and
2. Within 30 days of the date from which the Director signs this administrative consent order, place an anonymous ad in the local paper (Quad City Times)

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stating the company's non-compliance with the State of Iowa open burning and open dumping rules. Such ad shall be reviewed by DNR Field Office 6 prior to placement with the newspaper.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$1,535.50. The administrative penalty is determined as follows:

Economic Benefit – Holst Trucking saved time and money by improperly dumping and burning rather than taking the waste to a landfill for proper waste disposal. Holst Trucking had a pile of solid waste and burnt debris with an estimated volume of 58 cubic yards (based upon the volume of a cone, roughly 15 feet high and 20 feet in diameter). Based upon the premise of 66% reduction of volume after burning, the original burn pile of solid waste was approximately 174 cubic yards. The Scott County Landfill charges \$8.25 per cubic yard for disposal. Therefore, Holst Trucking saved approximately \$1,435.50 by not delivering the waste to the Scott County Landfill. Based on the above considerations, \$1,435.50 is assessed for this factor.

Gravity – The waste that was burned was construction and demolition (C & D) disposal. Because Mr. Holst is a contractor in the demolition industry, the demolition waste Holst Trucking burned and dumped is considered trade waste. Trade waste is specifically prohibited from being burned by 567 IAC 100.1. Open burning of trade wastes can release toxins into the air, may pollute groundwater, and pose a risk to human health and the environment. Open dumping also impacts the environment, the character of the neighborhoods, and the quality of life of local residents. Moreover, DNR expended a number of hours in the investigation of this matter. Based on the above considerations, \$50.00 is assessed for this factor.

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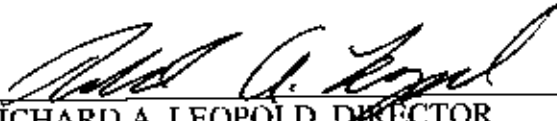
Culpability – Being in the demolition industry, as well as having been informed of the state rules regarding proper disposal rules after the June 5, 2002 investigation, Mr. Holst had an opportunity to correct his company's procedures and had chosen not to do so. Based on the above considerations, \$50.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Holst Trucking. For that reason Holst Trucking waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 12 day of
Sept., 2008.



ROBERT HOLST
Holst Trucking Company, Inc.

Dated this 1 day of
Sept, 2008.

No Facility #: Anne Preziosi; Field Office 6; Ryan Stouder; VI.C and VII.C.1.